

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 20-04

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$5,100,000 IN PRINCIPAL AMOUNT OF A DEBT OBLIGATION TO FINANCE THE ACQUISITION OF APPROXIMATELY 248 ACRES OF LAND; PROVIDING FOR A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE DEBT OBLIGATION; PROVIDING FOR THE RIGHTS OF THE HOLDER OF SUCH NOTE; PROVIDING SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**Whereas**, in connection with the Settlement Agreement dated as of December 4, 2019, between the City of Bonita springs, Florida (the "City") and BE 278, LLC (the "Seller") and BG Mine, LLC (the "Settlement Agreement"), the City has agreed to purchase from the Seller approximately 248 acres of land generally located east of Interstate 75 and south of the Bonita Springs Utilities facility, as more particularly described in the Settlement Agreement and the plans and specifications on file with the City (the "Land").

**Whereas**, the acquisition of the Land is in the best interests of the City and its citizens and constitutes a paramount public purpose.

**Whereas**, the most efficient and cost-effective method of financing the acquisition of the Land is through a term loan or line of credit to be evidenced by a revenue note, bond or other form of debt obligation (the "Debt Obligation") to be issued by the City pursuant to the authority of this Ordinance, the provisions and details of which shall be provided for in the hereinafter defined Resolution, payable from Non-Ad Valorem Revenues (as defined herein) in the manner and to the extent provided herein and in the Resolution.

**Whereas**, the principal of, redemption premium, if any, and interest on the Debt Obligation shall be payable from Non-Ad Valorem Revenues in the manner and to the extent provided herein and in the Resolution and the City shall never use or be required to use its ad valorem taxing power for the payment of the Debt Obligation. The Debt Obligation shall not constitute a direct obligation of the City or a pledge of its faith and credit, nor shall the holder of the Debt Obligation have any lien or encumbrance on any property in the City.

**THE CITY OF BONITA SPRINGS HEREBY ORDAINS:**

**Section 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and hereby made a part of this Ordinance and adopted as legislative findings.

**Section 2. Definitions.** When used in this Ordinance, the following terms shall have the following meanings, unless some other meaning is plainly intended:

**"City"** shall mean the City of Bonita Springs, Florida, a municipal corporation established under the laws of the State of Florida.

**"Council"** shall mean the City Council of the City of Bonita Springs, Florida.

**"Debt Obligation"** shall mean the revenue note, bond or other form of debt obligation to be issued by the City pursuant to the authority of this Ordinance, to be more particularly described in the Resolution.

**"Land"** shall have the meaning ascribed thereto in the recitals hereof.

**"Non-Ad Valorem Revenues"** shall mean all revenues of the City derived from any source whatsoever that are allocated to and accounted for in the City's governmental funds, other than ad valorem taxation on real or personal property, which are legally available to make the payments required herein and in the Resolution.

**"Ordinance"** shall mean this Ordinance enacted by the Council on the date hereof, as it may be amended and supplemented from time to time.

**"Resolution"** shall mean the resolution of the City, including any loan or line of credit agreement approved thereby, providing for the security for and repayment of the Debt Obligation, the rights and remedies of the holder of the Debt Obligation and various other terms and details relating to the Debt Obligation, as the same may be amended or supplemented from time to time.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Ordinance.

Words importing the singular number include the plural number, and vice versa.

**Section 3. Authorizing the Acquisition of the Land.** The City hereby authorizes the acquisition of the Land.

**Section 4. Issuance of the Debt Obligation.** The Debt Obligation is hereby authorized to be issued in an original principal amount of not exceeding \$5,100,000. The Debt Obligation may be issued in one or more series if necessary or desirable. The particular designation of the Debt Obligation shall be established by the Resolution. The Debt Obligation shall be issued for the purposes of providing moneys to (A) finance the acquisition of the Land and (B) pay the costs and expenses of issuing the Debt Obligation. The principal of, redemption premium, if any, and interest on the Debt Obligation shall be payable from the Non-Ad Valorem Revenues to the extent and in the manner provided herein and in the Resolution.

The Debt Obligation shall be dated such date or dates, shall bear interest at such rate or rates, shall mature at such times and in such amounts as may be determined by

the Resolution, and may be made redeemable before maturity, at the option of the City, at such price or prices and under such terms and conditions as may be determined by the Resolution. The Council shall determine by the Resolution the form of the Debt Obligation, the manner of executing such Note, and shall fix the denomination or denominations of the Debt Obligation, the place or places and dates and manner of payment of the principal and interest, and such other terms and provisions of the Debt Obligation as it deems appropriate. The Debt Obligation may be issued as a current interest paying debt obligation, a variable rate debt obligation, a serial debt obligation, a term debt obligation, a taxable debt obligation, a tax-exempt debt obligation or any combination thereof, as shall be determined by the Resolution. In case any officer whose signature or a facsimile of whose signature shall appear on the Debt Obligation shall cease to be such officer before the delivery of such Note, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. The Council may sell the Debt Obligation in such manner and for such price as it may determine by the Resolution to be in the best interests of the City.

The Debt Obligation may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Ordinance (including the adoption of the Resolution) or by the Resolution.

The proceeds of the Debt Obligation shall be disbursed in such manner and under such restrictions, if any, as may be provided by the Resolution. The Debt Obligation shall be secured in all respects by the Resolution which shall include such matters as are customarily provided in such debt instruments including, but not limited to, rights and remedies of the holder of the Debt Obligation, application of proceeds of the Debt Obligation and the security and source of repayment of the Debt Obligation.

**Section 5. Covenant to Budget and Appropriate.** In the Resolution, the City shall covenant and agree to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay debt service on the Debt Obligation when due, as provided in the Resolution. Any such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City shall not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate will not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor will it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor will it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor will it give the holder of the Debt Obligation a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Revenues will be subject in all respects

to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein and in the Resolution shall have the effect of making available for the payment of debt service on the Debt Obligation in the manner described herein and in the Resolution, Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder and under the Resolution; subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes of the City or which are legally mandated by applicable law.

Notwithstanding the foregoing, the provision in the Resolution regarding the City's covenant to budget and appropriate sufficient Non-Ad Valorem Revenues may differ from this Section 5 hereof to the extent determined necessary or desirable by the Council in its adoption or execution of such Resolution provided the substance and intent of this Section 5 is not materially changed.

**Section 6.** Taxing Power Not Pledged. The Debt Obligation issued under the provisions of this Ordinance shall not be deemed to constitute a pledge of the faith and credit of the City, but the Debt Obligation shall be payable from the Non-Ad Valorem Revenues in the manner and to the extent provided herein and in the Resolution. The issuance of the Debt Obligation under the provisions of this Ordinance shall not directly, indirectly or contingently obligate the City to levy or to pledge any form of ad valorem taxation whatever therefor. The holder of the Debt Obligation shall never have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any portion of the Debt Obligation or the interest thereon against any property of the City, nor shall the Debt Obligation constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City.

**Section 7.** Trust Funds. All moneys received pursuant to the authority of this Ordinance, whether as proceeds from the sale of the Debt Obligation or any Non-Ad Valorem Revenues budgeted and appropriated as provided herein and in the Resolution, shall be deemed trust funds, to be held and applied solely as provided in this Ordinance and in the Resolution.

**Section 8.** Remedies of Holder of the Debt Obligation. The holder of the Debt Obligation, except to the extent the rights herein given may be restricted by the Resolution, may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by such Resolution, to be performed by the City.

**Section 9.** Alternative Method. This Ordinance shall be deemed to provide an additional and alternative method for the doing of things authorized hereby and shall be

regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the health, safety and welfare of the inhabitants and/or property owners of the City, shall be liberally construed to effect the purposes hereof.

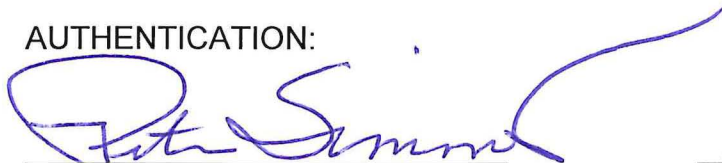
**Section 10. General Authority.** The members of the Council of the City and the officers, attorneys and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Ordinance, or desirable or consistent with the requirements hereof for the full punctual and complete performance of all the terms, covenants and agreements contained herein.

**Section 11. Severability.** In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

**Section 12. Effective Date.** This Ordinance shall become effective immediately upon its enactment.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida this 19th day of August, 2020.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Vote:

Quaremba	Aye	Corrie	Aye
Purdon	Aye	Gibson	Aye
Carr	Aye	Forbes	Aye
		Simmons	Aye

Date filed with City Clerk: 8/24/2020